

Tracee Plowell, Assistant Chief (N.Y. Attorney Registration #2994457)  
Tracee.Plowell@usdoj.gov  
Michelle Pascucci, Trial Attorney (Mass. Board of Bar Overseers #690889)  
Michelle.Pascucci@usdoj.gov  
Fraud Section, Criminal Division  
U.S. Department of Justice  
1400 New York Avenue NW  
Washington, DC 20005  
202-616-1668 (Plowell) / 202-307-2208 (Pascucci)

*Attorneys for the United States*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

United States of America,

Plaintiff,

vs.

James B. Panther, Jr.,  
a/k/a “James Suqui” and “James Suquilanda,”

Defendant.

Case No. 2:19-CR-448-2

**UNITED STATES’ NOTICE RE INTENT  
TO INTRODUCE EVIDENCE OF  
OTHER ACTS**

Pursuant to the Court’s Scheduling Order entered November 12, 2019, the United States, by and through undersigned counsel, gives notice of its intent to introduce evidence at trial of the defendant’s other acts pursuant to Fed. R. Evid. 404(b). Specifically, the government anticipates that it may seek to introduce evidence of the defendant’s involvement in another market manipulation stock fraud scheme involving the coconspirators here.

**I. Evidence Sought to be Presented**

The Indictment charges the defendant for his role facilitating a market manipulation stock fraud scheme involving the biotech company Biozoom, Inc. (“Biozoom”) alongside coconspirators Francisco Villena Abellan and Faiyez Dean. In addition to testimony as to the charged conduct,

1 the government may introduce “other acts” testimony that the defendant was involved in a market  
2 manipulation stock fraud scheme planned by defendant Abellan involving shares of the company  
3 Ocean Electric, Inc. (“OCEL”) that began prior to and continued throughout the Biozoom pump-  
4 and-dump scheme.<sup>1</sup> The defendant, defendant Abellan, and defendant Dean, alongside other co-  
5 conspirators and individuals, orchestrated a market manipulation fraud scheme involving some of  
6 the same nominee shareholders used in the Biozoom scheme in an effort to move OCEL from the  
7 over-the-counter market to the NASDAQ for trading. Shares were then transferred to nominee  
8 shareholders who deposited or attempted to deposit shares into brokerage houses for market  
9 trading. As in the Biozoom scheme, the OCEL shares were in fact controlled by the co-  
10 conspirators and other individuals.

11  
12 The government intends to offer this evidence to show the defendant’s motive, intent,  
13 opportunity, preparation, plan, knowledge, absence of mistake, or lack of accident in the  
14 commission of the charged conduct. In particular, the government understands that the defendant  
15 may contend that he believed he had taken part in a legitimate operation and did not realize that  
16 he and his coconspirators were in fact operating an illegal market manipulation fraud scheme. His  
17 involvement in a parallel scheme involving these same individuals will evince his knowledge that  
18 he was engaging in criminal activity.  
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26 <sup>1</sup> The “other act” evidence will be proved through witness testimony and documentary  
27 evidence. *See, e.g.*, bates BIZM-SDFL-0000270759; BZM-SDFL-0000270666; SEC-  
28 DOJ4-EPROD-000024918; SEC-DOJ4-EPROD-000168818; DEMUTH-000002235; and  
SEC-DOJ4-EPROD-000168819.

## II. Admissibility of 404(b) Evidence

Rule 404(b) of the Federal Rules of Evidence provides for the admission of “other crimes, wrongs, or acts” for reasons other than to show criminal disposition. *United States v. Chea*, 231 F.3d 531, 534 (9th Cir. 2000) (citing *United States v. Mehrmanesh*, 689 F.2d 822, 930 (9th Cir. 1982)). Although the rule precludes the admission of evidence of other acts of the defendant if the evidence is offered solely to prove the defendant’s character, such evidence is admissible for purposes “such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.” Fed. R. Evid. 404(b)(2). The Ninth Circuit liberally construes 404(b) as “a rule of inclusion” and has stated on appeal that evidence is deemed admissible under 404(b) if it is admissible on any ground other than to show propensity. *United States v. Jackson*, 84 F.3d 1154, 1159 (9th Cir. 1996) (quoting *United States v. Meling*, 47 F.3d 1546, 1557 (9th Cir. 1995)); accord *United States v. Bradshaw*, 690 F.2d 704, 708 (9th Cir. 1982).

The trial court has “wide discretion in deciding whether to admit the evidence, and the test for admissibility is one of relevance.” *United States v. Johnson*, 132 F.3d 1279, 1282 (9th Cir. 1997) (citing *Huddleston v. United States*, 485 U.S. 681, 687-88 (1988)); see also *United States v. Batts*, 573 F.2d 599, 603 (9th Cir. 1978) (according “[g]reat deference” to the trial court’s admission of 404(b) evidence as rebuttal). Other acts evidence is probative of something other than criminal character and therefore admissible where it:

- 1) tends to prove a material point in issue in the present case;
- 2) is not too remote in time;
- 3) is proven with sufficient evidence; and
- 4) if admitted to prove intent, is similar to the offense charged.

1 *United States v. Beckman*, 298 F.3d 788, 794 (9th Cir. 2002) (citing *United States v. Murillo*, 255  
2 F.3d 1169, 1175 (9th Cir. 2001) (overruled on other grounds as recognized in *United States v.*  
3 *Mendez*, 476 F.3d 1077, 1080 (9th Cir. 2007))). If the evidence meets the relevance test under  
4 Rule 404(b), it should be admitted unless its prejudicial impact substantially outweighs its  
5 probative value. *Johnson*, 132 F.3d at 1282 (citing *United States v. Boise*, 916 F.3d 497, 502-03  
6 (9th Cir. 1990)).  
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8 Dated: February 3, 2020

9 Respectfully submitted,

10 ROBERT ZINK  
11 Chief, Fraud Section

12 By: /s/ Michelle Pascucci  
13 Tracee Plowell, Assistant Chief  
14 Michelle Pascucci, Trial Attorney  
15 Fraud Section, Criminal Division  
16 U.S. Department of Justice  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that, on February 3, 2020, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will send notification to counsel of record.

Respectfully submitted,

BY: /s/ Michelle Pascucci